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Supreme Court of the United States

October Term No. 916

THOMAS KAPATOS,
Petitioner-Appellant,

—against—

UNITED STATES OF AMERICA,
Respondent-Appellee.

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

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Memorandum Decision of Hon. Edward Weinfeld.
February 16, 1970

70 Civil 168

This is the third motion by petitioner to vacate his judgment of conviction entered upon a jury verdict. The constitutional claim now presented was the subject of direct appeal and also one of the grounds urged in support of his petition for certiorari, which was denied. 389 U.S. 836 (1967). The issue may not be relitigated by a motion under section 2255 of Title 28. *E.g. Kaufman* v. *United States*, 394 U.S. 217, 227 n.8 (1969); *see also Genovese* v. *United States*, 378 F.2d 748 (2d Cir. 1967); *United States* v. *Tomaiolo*, 378 F.2d 26, 28 (2d Cir.), *cert. denied*, 389 U.S. 896 (1967).

The hearsay allegations, advanced for the first time, that witnesses were led past defendant and his trial counsel in a public corridor of this building prior to trial require no hearing. *See United States* v. *Birnbaum*, Docket No. 33815 (2d Cir. Feb. 3, 1970); *Dirring* v. *United States*, 370 F.2d 862, 865 (1st Cir. 1967); *D'Errole* v. *United States*, 361 F.2d 211, 212 (2d Cir.), *cert. denied*, 385 U.S. 985 (1966); *United States* v. *Keogh*, 271 F. Supp. 1662, 1668 n.22 (S.D. N.Y. 1967), *modified*, 391 F.2d 138 (2d Cir. 1968). And even assuming the incident did occur, obviously it was known to the defendant and his trial counsel when those witnesses testified and were subjected to thorough cross-examination on the issue of identification.

The motion is denied in its entirety.

Dated: New York, N. Y.
February 16, 1970

EDWARD WEINFELD
United States District Judge

Memorandum Decision of Hon. Edward Weinfeld.
December 12, 1969

69 Civil 3350

The attached application has not been verified. Too many applications have recently been submitted in disregard of the Rules. Rule 28(b), General Rules of the Southern District; 28 U.S.C. § 2242 (1964).

The motion is denied.

Dated: New York, N. Y.
December 12, 1969

EDWARD WEINFELD
United States District Judge

In

Opinion

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 18—September Term, 1970.

(Argued September 14, 1970 Decided October 6, 1970.)

Docket No. 34638

THOMAS KAPATOS,

Petitioner-Appellant,

—against—

UNITED STATES OF AMERICA,

Respondent-Appellee.

Before:

FRIENDLY, SMITH and HAYS,

Circuit Judges.

Appeal from an order of the District Court for the Southern District of New York, Edward Weinfeld, *Judge*, denying, without an evidentiary hearing, a motion under 28 U.S.C. § 2255 to vacate a conviction. Affirmed.

PATRICK M. WALL, Esq. (Theodore Rosenberg, Esq., Brooklyn, New York, of Counsel), *for Petitioner-Appellant.*